IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.382 of 2006.

Date of decision:20.6.2006.

State of H.P. .. ..Appellant

Versus

Roop Lal and others .. ..Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting ? No

For the appellant: Mr.Ashutosh Burathoki, Addl.A.G.

For respondents:

Deepak Gupta, J.(oral)

This petition for leave to appeal is directed against the judgment of JMIC(1), Mandi in Criminal Case No.32-II/2000 decided on 28.9.2005 whereby the accused have been acquitted of the charges leveled against them under Sections 447, 147, 323, 325, 504, 506 read with Section 149 IPC.

The prosecution case, in brief, is that complainant PW-1 Bhup Singh entered his field on 23.10.1999 at about 6.30 p.m. with the intention of ploughing it with its tractor. Duni Chand was driving the tractor. According to the complainant this field had been allotted to them in a partition which was effected two days earlier on 21.10.1999. When he went to the field the accused who were all armed with dandas and kudali entered the field and stopped him ploughing the filed and beat him up. Duni Chand drove away with the tractor. Accused Roshan Lal is alleged to have

given danda blows on his nose. His family members heard the noise and were told by Duni Chand about the incident and thereafter his family members came to the spot and when they tried to rescue him accused Roshan Lal also gave blow of danda on the left eye of Usha Devi. When Usha Devi raised hue and cry the accused ran away.

The complainant in cross examination admits that the entire land was owned by his grand father. He has denied the suggestion that no partition proceedings were concluded on 21.10.1999. He however admitted that the revision petition with regard to the partition is pending before the Financial Commissioner. According to this witness the occurrence continued for about one and a half hours. He admitted that there are 30-35 houses adjacent to the site of the incident but according to him none of the villager witnessed the occurrence.

The case of the defence is that the complainant in fact tried to forcibly take possession of the land and when he was stopped he attacked the accused. PW-2 Chet Ram states that Duni Chand came to the house and informed him and the others present there that the accused persons were fighting. He went to the spot at 7.30 and when he intervened Roshan Lal gave fist blows and Roshan Lal gave him a blow of Danda. In cross examination he admits that accused are his step brothers. He also admits that he is an Advocate. He has denied the suggestion that at his instance 20 cases have

been lodged against the accused. He denied portion "A" to "A" of his earlier statement.

PW-3 is Duni Chand, PWs-4 & 5 are Umri Devi and Usha Devi. It would be pertinent to mention that PW-5 Usha Devi has admitted that her father-in-law Chet Ram had filed about 18-20 cases against the accused persons out of which some of cases have been instituted through her husband Rohitash PW-6. PW-6 also admits that he has filed 2-3 cases against the accused. PW-2 however states that he has not filed any suit against the accused persons except an application for partition of the joint land. It is clear that somebody is not telling the truth. It is also apparent that there is enmity between the complainant party and the accused persons.

The most important fact is that as per the complainant the Patwari and Kanungo had handed over possession of the disputed field t them on 21.10.1999. No document has been placed on record to support this version. Even PW-2 Chet Ram has admitted that no instrument of partition has been drawn up till date and that Revision against the partition is pending. The Patwari appeared as PW-9 and he has also not stated a single word that he has handed over physical possession to the complainant. The prosecution has failed to prove the very genesis of the dispute. It has also failed to show as to who was the aggressor party. No independent witnesses have been examined though the place of occurrence is adjacent to 30-35 houses of the villagers.

Keeping all these facts into consideration I feel that the learned trial Court rightly acquitted the accused. The impugned judgment calls for no interference and the petition for leave to appeal is rejected.

June 20, 2006. **(Deepak Gupta),**
PV **Judge**